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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,254	02/08/2002	Jacques Sebban	05725.1001	1052

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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,254

Applicant(s)

SEBBAN, JACQUES

Examiner

David Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-44 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

In view of the persuasive arguments in the Appeal Brief filed on 16 May 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 17-22, 25, 26, 28, 29, 31-34, 38-42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Lunderman et al. (4,840,288; of record).

Lunderman et al. disclose a compact 10 comprising a base 12, an intermediate element 30, and a lid 14 (see Figs. 1-6). The base defines a housing 18 for the cosmetic product (see col. 2, lines 59-61). The base includes a first catch member 22 defined by an opening extending in a plane in a lateral wall 20. The intermediate element includes a second catch member 40 that flexes elastically in a direction perpendicular to a longitudinal axis of the intermediate element and snaps together with the first catch member to irreversibly lock the intermediate element to the base (see col. 2, lines 17-20 and col. 3, lines 38-47). The catch member includes a hook portion 48. The lid is articulated on the base via the intermediate element such that it can pivot through 360 degrees relative to the base (see col. 2, lines 12-16). When the catch members are engaged and the intermediate element is irreversibly locked to the base, the intermediate element is arranged substantially entirely on one side of the plane (see Fig. 6, showing the intermediate element substantially entirely to the right of the plane of the opening, as opposed to the base, which is to the left of the plane). The intermediate element includes first and second longitudinal edges and corresponding first and second articulation axes in the vicinity of the edges (see Fig. "A" below). The compact can be formed as an integral piece by molding and either or both of the hinges can be formed as pin or living hinges (see col. 3, lines 7-16). The lateral wall is delimited by a first edge adjacent the lid when the lid is closed relative to the base and a second edge opposite the first edge, and the first catch member 22 is at a distance from the first edge (see Figs. "B" and "C" below).

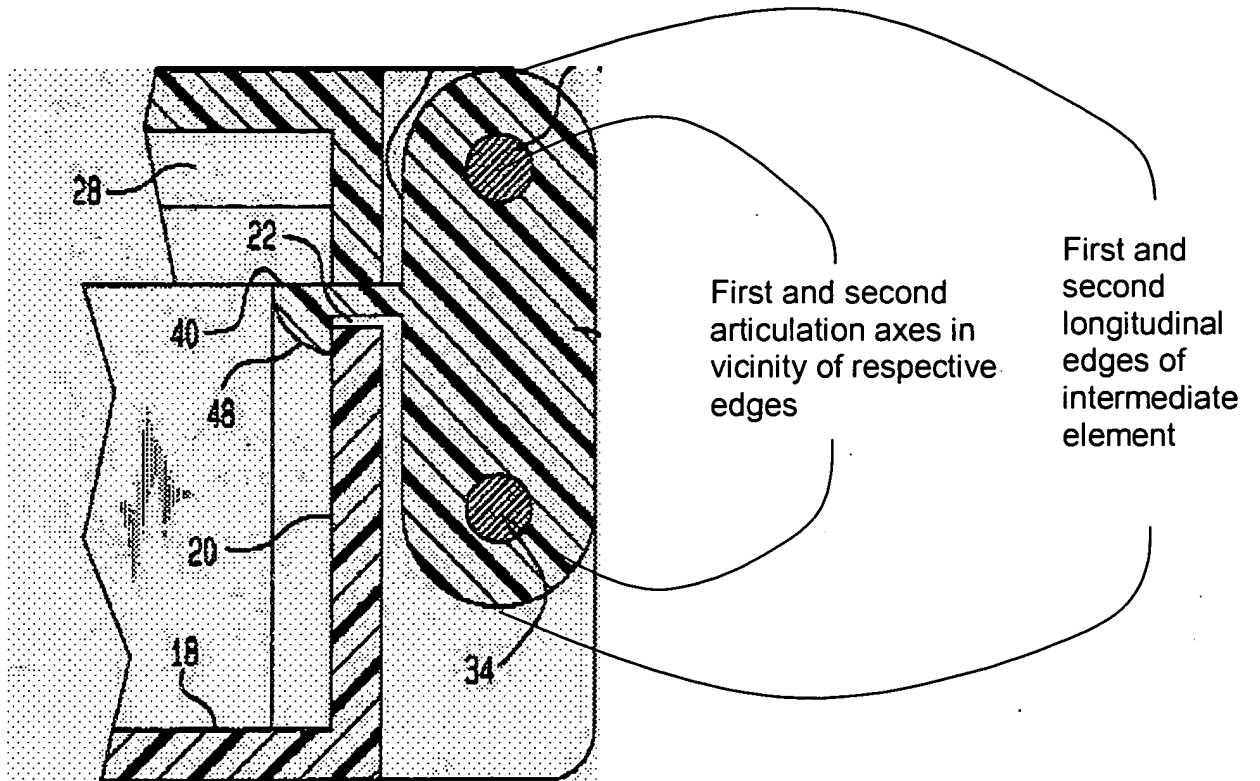


Fig "A" (cf. Fig. 6)

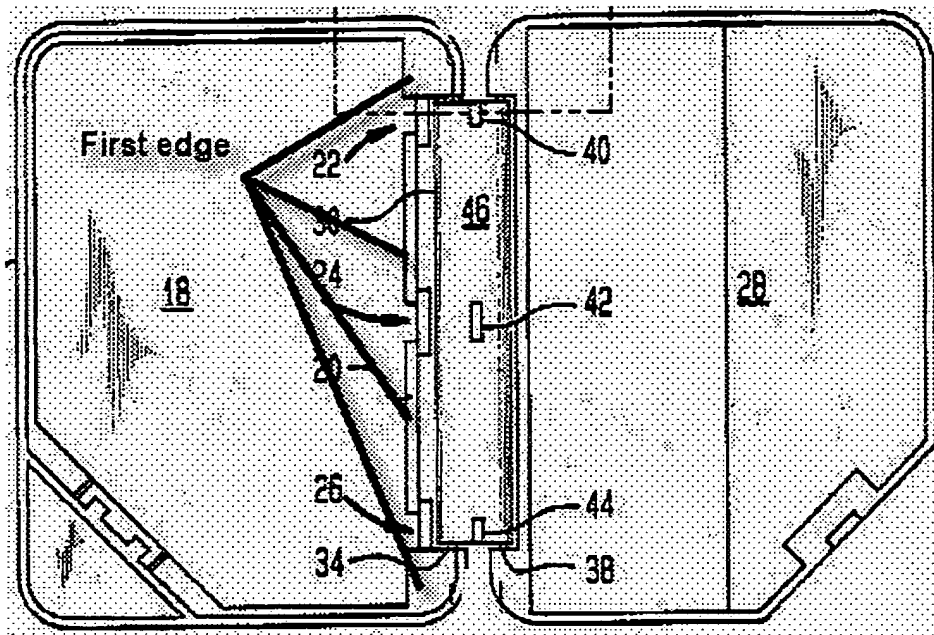


Fig. "B" (cf. Fig. 1)

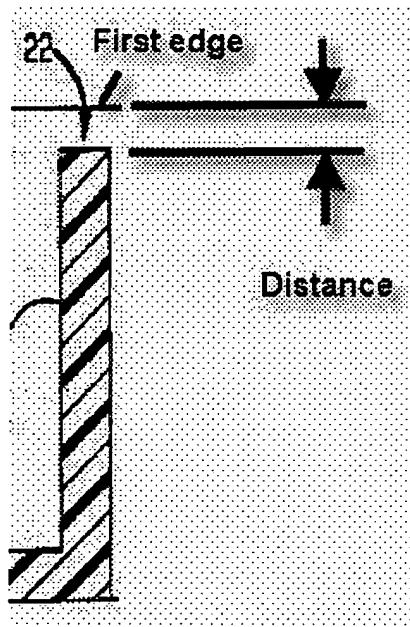


Fig. "C" (cf. Fig. 2)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunderman et al. (4,840,288; of record).

Lunderman et al. disclose the claimed invention except for explicitly disclosing the case being made of a polyolefin material such as polypropylene and the lid being made of a material such as urea formaldehyde, acrylobutadiene styrene, polyoxymethylene, and polystyrene acrylonitrile. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the case from a polyolefin material such as polypropylene and to form the lid from a material such as urea formaldehyde, acrylobutadiene styrene, polyoxymethylene, and polystyrene acrylonitrile or from any of numerous other known materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lunderman et al. (4,840,288; of record) in view of Contreras, Sr. (4,863,034).

Lunderman et al. disclose the claimed invention except for the compartment defined in the receptacle. Contreras, Sr. discloses a compact 10 having a compartment

17 defined in a receptacle 11, in order to allow the compartment and its contents to be removed and replaced and allow the use of a variety cosmetics (see, e.g., Figs. 1 and 6 and col. 2, lines 39-58). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the compact of Lunderman et al. with a compartment defined in the receptacle, in view of Contreras, Sr., in order to allow the compartment and its contents to be removed and replaced and allow the use of a variety cosmetics.

Claims 35-37 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunderman et al. (4,840,288; of record).

Lunderman et al. disclose the claimed invention except for the articulation axis of the intermediate element and the base being located substantially at the second edge of the lateral wall. However, it would have been obvious to form the hinges, whether living or articulating, and the corresponding articulation axis at the second edge of the lateral wall, since it has been held that mere relocation of parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Allowable Subject Matter

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. For reference, it is noted that Dirksing (5,568,820; of record) also discloses an irreversible-type latch. Also for reference, Baccaray (6,002,651) discloses a removable tray (see, e.g., Fig. 1, reference numeral 11; col. 1, lines 27-31; and col. 2, lines 15-22).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock
24 July 2005



EDUARDO C. ROBERT
PRIMARY EXAMINER